

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

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Case Title: Gilbert Victor Gallegos

Case Number: 05-17257

Document Information

Description: Order Resolving [9-1] Show Cause Order, why case should not be dismissed for failure to pay filing fee and directing that fee be paid to the court from funds held by Chapter 13 Trustee as a priority Administrative Expense .

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Filer Information

Submitted By: Patti Hennessy

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO**

In re: GILBERT GALLEGOS,

No. 13-05-17257 MA

Debtor.

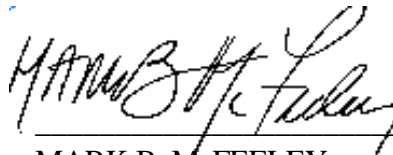
**ORDER RESOLVING ORDER TO SHOW CAUSE WHY CASE
SHOULD NOT BE DISMISSED FOR FAILURE TO PAY FILING FEE
AND DIRECTING THAT FEE BE PAID TO THE COURT FROM
FUNDS HELD BY CHAPTER 13 TRUSTEE AS A PRIORITY
ADMINISTRATIVE EXPENSE**

THIS MATTER is before the Court on the Order to Show Cause Why Case Should not be Dismissed for Failure to Pay Filing Fee (“Order to Show Cause”). The Court held a final hearing on the Order to Show Cause on November 10, 2005 at took the matter under advisement. Filing fees in the amount of \$155.00 from a previous bankruptcy proceeding filed by the Debtor remain unpaid.¹ Debtor did not list the unpaid filing fee from his prior bankruptcy proceeding as an unsecured claim on Schedule F, but takes the position that the unpaid filing fee is a non-priority claim. Debtor has no additional funds above the amounts committed to plan payments from which he can pay the filing fee. In light of 11 U.S.C. § 523(a)(17), 11 U.S.C. § 507(a)(1), and 28 U.S.C. § 1930, and because the outstanding filing fee is a condition to confirmation under 11 U.S.C. § 1325(a)(2), the Court finds that the unpaid filing fee should be paid as a priority administrative expense from plan funds contributed by the Debtor to the Chapter 13 Trustee.

¹The unpaid filing fees are associated with Case No. 13-03-17893 MA. Debtor has filed three previous chapter 13 proceedings which have all resulted in dismissal. *See* 13-03-17893 MA; 13-04-11687 MA and 13-05-10176 MA.

Chapter 123 of Title 28 governs fees and costs to be charged by the federal courts, and 28 U.S.C. § 1930 sets the filing fees for bankruptcy cases. Any fee imposed by the court for the filing of a case is not dischargeable in a Chapter 7 bankruptcy proceeding. 11 U.S.C. § 523(a)(17); *See also* Rule 4004(c)(1)(G) (in a Chapter 7 case, the court shall grant a discharge unless the debtor has not paid in full the filing fee prescribed by 28 U.S.C. § 1930). Priority administrative expenses include the “fees and charges assessed against the estate under chapter 123 of title 28.” 11 U.S.C. § 507(a)(1). Thus filing fees associated with a case are entitled to first priority treatment under the Bankruptcy Code. *Id.* While the outstanding fees at issue here are the result of unpaid fees that remain unpaid from a prior proceeding, any filing fee required under 28 U.S.C. § 1930 is a condition to confirmation of the Debtor’s chapter 13 plan. 11 U.S.C. § 1325(a)(2) (“the court shall confirm a plan if – (2) **any** fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid.”) (emphasis added). Read together, these code sections and chapter 123 of title 28 indicate that any unpaid filing fees from a prior bankruptcy proceeding must be paid. In this case, they may be paid as an administrative priority expense from funds held by the Chapter 13 trustee.

WHEREFORE, IT IS HEREBY ORDERED, that the Chapter 13 Trustee pay to the Court from funds contributed to the plan by the Debtor the unpaid filing fee in the amount of \$155.00.

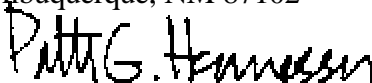
A handwritten signature in black ink, appearing to read 'Mark B. McFeeley', is written over a horizontal line.

MARK B. McFEELEY
United States Bankruptcy Judge

I certify that on the date shown on the attached document verification, a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered or mailed to the listed counsel and/or parties.

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